

REMARKS

Upon entry of the instant amendment, claims 1-10 remain pending in the above-identified application and stand ready for further action on the merits.

In this Amendment, claim 1 has been amended. Support can be found in the scope of components (A) and (B) of specification, at page 10, lines 5-10, page 10, line 36 to page 11, line 4, and page 11, lines 9-14.

Accordingly, the present amendments to the claims do not introduce new matter into the application as originally filed. As such entry of the instant amendment and favorable action on the merits are earnestly solicited at present.

Claim Rejections under 35 U.S.C. §§ 102 and 103

In the Office Action of March 17, 2010, claims 1, 2, 4 and 6-8 are rejected under 35 U.S.C. § 102(a) or (e) as being anticipated by or, in the alternative, under 35 U.S.C. § 103(a) as obvious over Saito et al. US '177 (US 2004/0137177).

Claims 3, 9 and 10 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Saito et al. US '177.

Further, claim 2 is rejected under 35 U.S.C. § 103(a) as being unpatentable over Saito et al. US '177, as applied to claim 1, in further view of Mueller US '765 (US 2006/0093765).

Finally, claim 5 is rejected under 35 U.S.C. § 103(a) as being unpatentable over Saito et al. US '177, as applied to claim 1, in further view of Osame et al. US '940 (US 6,663,940).

The rejections are maintained in the Advisory Action of August 24, 2010. The rejections are respectfully traversed. Reconsideration and withdrawal of the rejections are requested based on the following considerations.

Distinctions and Nonobviousness over the Cited References and the Combination thereof

As recited in amended claim 1, the claimed multi-chamber container has its interior partitioned by a weak seal portion provided through detachable heat sealing so that multiple contents are accommodated separately from each other (the claimed feature 1), and the heat seal layer comprises a composition containing two types of propylene copolymers components (components A and B) of propylene and ethylene and/or a C₄-C₈ α -olefin (the claimed feature 2), and further, components A and B have claimed elution properties that the ratio of the amount of elution to the total solution according to the TREF method (a temperature rising elution fractionation method) at the claimed temperature, *etc.* (temperature: 0 to 140°C, and solvent: ODCB (o-dichlorobenzene)) (with respect to component A: 15 wt% to 40 wt% at 0°C, and 5 wt% to less than 15 wt% at 60 to 90°C, and with respect to component B: 2 wt% to 15 wt% at 0°C, and 20 wt% to 60 wt% at 60 to 90°C) (the claimed feature 3).

None of the cited references discloses or suggests the claimed features. Thus, the claimed invention is not anticipated by each of the cited references. ("A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." *Verdegal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). "The identical invention must be shown in as complete detail as is contained in the ... claim." *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989). The elements must be arranged as required by the claim, but this is not an *ipsissimis verbis* test, *i.e.*, identity of terminology is not required. *In re Bond*, 910 F.2d 831, 15 USPQ2d 1566 (Fed. Cir. 1990)).

Further, the present invention exhibits unexpected, advantageous results. Especially, because of the features 2 and 3, the heat sealable layer exhibits a wide range of temperature in which the change of seal strength is comparatively small for large change heat sealing temperature. In the last response filed August 17, 2010, refereeing the experimental data in connection with Sheet 1 of Example 1 in the declaration under 37 C.F.R. § 1.132 of August 11, 2010 (hereinafter, referred to as the previous declaration), it is explained that in using the sheet of the present invention, the range of heat seal temperature at the weak seal portion is 60°C (i.e., 130-190°C), whereas when the sheet of Saito et al. US '177 is used, the range of heat seal temperature at the weak seal portion is only 20°C (i.e., 120-140°C).

In this regard, in the Advisory Action of August 24, 2010, the Examiner asserts as follows.

Applicant argues that the data presented in the declaration of Toyoaki Suzuki (Table 2) shows unexpected results because the sheet (sheet 1) of Example 1 of the present invention has a broader range of effective sealing temperature and therefore can be controlled more easily and freely.

The data is not persuasive given that the data presented is not commensurate in scope with the scope of the claims. Data is only presented for the sheet of Example 1, which is composed of component (a) and (b) in a ratio of 6:4, component (a) having an amount of elution at 0°C to the whole amount of elution of 23 wt% and a ratio of the amount of elution at 60°C to 90°C to the whole amount of elution of 8 wt%, and component (b) having an amount of elution at 0°C to the whole amount of elution of 7 wt% and a ratio of the amount of elution at 60°C to 90°C to the whole amount of elution of 50 wt%.

To respond to the Examiner's assertion, Applicants have filed additional data in the form of a declaration under § 1.132 of December 6, 2010 herewith (see attachment) (hereinafter, referred to as the new declaration). Additional data of Sheet 2 of Example 7 and Sheet 3 of Example 8 are shown in the new declaration in addition to Sheet 1 of Example 1.

Each of Sheets 2 and 3 was prepared in substantially the same manner of Sheet 1 of Example 1 except using the different Components (a) and (b) having the different elution properties measured by TREF method (see pages 2-6 of the new declaration). Regarding Sheet 2, Component (a) has the elution property being 30 wt% at 0 °C, 5 wt% at 60-90°C, and Component (b) has the elution property being 5 wt% at 0°C and 55 wt% at 60-90°C. Regarding Sheet 3, Component (a) has the elution property being 15 wt% at 0 °C, 10 wt% at 60-90°C, and Component (b) has the elution property being 10 wt% at 0°C and 40 wt% at 60-90°C.

As shown in Table 3 of page 6 of the new declaration, Sheets 1-3 represent sheets composed of Component (a) having the elution property being 15-30 wt% at 0 °C, 5-10 wt% at 60-90°C, and Component (b) having the elution property being 5-10 wt% at 0°C and 40-55 wt% at 60-90°C. Thus, the data as shown in Table 3 is commensurate with the scope of the amended claim 1 of Component (A) having the elution property being 15-40 wt% at 0 °C, 5 to less than 15 wt% at 60-90°C, and Component (B) having the elution property being 2-15 wt% at 0°C and 20-60 wt% at 60-90°C.

As shown in Table 4 of page 8 of the new declaration, each of Container 7 with Sheet 2 and Container 8 with Sheet 3 exhibits substantially the same properties (*e.g.*, haze value and tensile modulus), which were measured immediately after sterilization at 121°C for 30 minutes of total light transmittance, as Container 1 with Sheet 1.

Further, the present invention has a wider range of heat seal temperature than the invention of Saito et al. US '177 by applying Sheets 2 and 3 to the heat sealing conditions of Saito et al. US '177 as shown in paragraph [0151] (see also page 5 of the last response of August 17, 2010). Regarding an evaluation manner, the same manner (the strong sealed portion has a 180° peel strength of usually 3 to 6 kgf/15mm, and the weak sealed portion has a 180° peel

strength of usually 0.2 to 2kgf/15mm, as disclosed in paragraph [0080] of Saito et al. US '177) was adopted as in the last response (see also page 5 of the last response of August 17, 2010). The results are shown in Table 5 (see page 9 of the new declaration).

As shown in Table 5, it is evident that in using Sheets 2 and 3 of the present invention, the ranges of heat seal temperature at the weak seal portion are 50°C (*i.e.*, 130-180°C) and 60°C (*i.e.*, 130-190°C), respectively. On the other hand, when the sheet of Saito et al. US '177 is used, the range of heat seal temperature at the weak seal portion is only 20°C (*i.e.*, 120-140°C). The wider range of heat seal temperature means that the seal strength is more effectively controllable. In view of the new declaration, it is further clarified that the present invention exhibits advantageous properties (*e.g.*, 30°C or 40°C wider range of heat seal temperature than that of Saito et al. US '177's invention).

The difference of the properties between the present invention and the invention of Saito et al. US '177 is attributed to the copolymer having the claimed ratio of an amount of elution which is defined by the claimed analytical method of TREF (a measurement of an amount of elution to ODCB at the temperatures of 0°C and 60-90°C). Saito et al. US '177 merely employs a copolymer in accordance with a measurement of an amount of elution to xylene at a room temperature 23±2°C (see paragraph [0106] of Saito et al. US '177). In short, such differences of the analytical methods results in the differences of the copolymers, and also the differences of the range of heat seal temperature. Thus, Saito et al. US '177 fails to disclose or suggest the features of the present invention, and further the claimed invention exhibits advantageous properties which are not expected by Saito et al. US '177.

Similarly, the secondary references (*i.e.*, Mueller US '765 and Osame et al. US '940) also fail to disclose or suggest the claimed features.

Therefore, the present invention is distinguished from each of the cited references. Also, as explained above, since none of the cited references discloses or suggests the claimed features, a *prima facie* case of obviousness is not established based on the combination of the cited references. Likewise, there is not provided any rationale and/or reasonable expectation of success based on the combination of the cited references, by which one skilled in the art could arrive at the present invention as claimed. Thus, it is submitted that the present invention is not obvious over the primary reference Saito et al. US '177 in view of the secondary references (Mueller US '765 and Osame et al. US '940).

Based on the foregoing considerations, Applicants respectfully request that the Examiner reconsider and withdraw the rejections.

CONCLUSION

Based upon the amendments and remarks presented herein, the Examiner is respectfully requested to issue a Notice of Allowance clearly indicating that each of the pending claims is allowed.

Should there be any outstanding matters that need to be resolved in the present application, the Examiner is respectfully requested to contact Toyohiko Konno, Reg. No. L0053 at the telephone number of the undersigned below, to conduct an interview in an effort to expedite prosecution in connection with the present application.

If necessary, the Director is hereby authorized in this, concurrent, and future replies to charge any fees required during the pendency of the above-identified application or credit any overpayment to Deposit Account No. 02-2448.

Dated: DEC 16 2010

Respectfully submitted,

By  #10053

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Attachment: Declaration by Mr. Toyooki Suzuki dated December 6, 2010 (10 pages)